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PROFESSIONAL MISCONDUCT.—THE CASE OF MR. BRADLEY AND THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ALTERCATIONS between judges and counsel in the conduct of a cause so rarely get beyond a momentary disturbance of the regularity of proceedings, except in petty tribunals, having no proper professional character either in their judges or their bar, that they may be best allowed to pass quietly into oblivion with the close of the day. But the case of Mr. Bradley and the Supreme Court of the District of Columbia has had such prominence given it by the nature of the trial in which the dispute first arose, and the unfortunate habit of the newspapers to call the court "the Supreme Court at Washington," that it is hardly proper to pass it by without some notice in a professional journal.

The facts seem to have been as follows:—

On the 2d of July, 1867, during the trial of the case of *The United States* v. *John H. Surratt*, in the Criminal Court of the District of Columbia, just after the adjournment of the court for the day, a difficulty occurred between the Presiding Judge, FISHER, and Joseph H. Bradley, Sr., the prisoner's counsel. The judge's account is, that as he was descending from the bench, Mr. Bradley accosted him in a rude and insulting manner, charging the judge with having offered him a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention to insult, and assured Mr. Bradley that he entertained no

feelings towards him but those of respect. Mr. Bradley, instead of accepting this explanation, or disclaimer, thereupon threatened the judge with personal chastisement.

Mr. Bradley's account differs very materially. He says that the court had not only been adjourned, but that the people had left the room, and Judge FISHER himself had gone out, but came back again for his umbrella, and, as he passed Bradley, the latter said, "Judge, what do you mean by treating me as you have done to-day?" The judge replied, in great excitement, shaking his finger insultingly in Bradley's face, and, after some altercation, the judge said, "Step out with me, step out, if you dare." Whereupon Bradley stepped towards him, but was seized by some members of the bar and held, and the judge, holding his clinched hand towards Bradley, said, "You know where to find me—I am responsible, in every form, for whatever I say or do," &c., with other abusive language.

With two such different versions before us, neither supported by the testimony of any but the interested and excited parties, it is impossible to form an opinion on the real facts as to the original aggressor, and in a question of insult, where manner and the relations of the parties are everything, it is, perhaps, impossible to do more than assume the safe general proposition that both were in the wrong.

The subsequent facts are sufficiently certain. On the conclusion of the trial, August 10th, Judge FISHER made an order reciting his version of the case as above given, and concluding with striking Mr. Bradley's name from the list of attorneys of *this court*. These words, as will be seen, subsequently became important.

Immediately on the announcement of the foregoing order, Mr. Bradley addressed the judge, saying, "Has the court adjourned yet?"

Judge FISHER.—"No, sir."

Mr. Bradley.—"Then, before it does adjourn, I desire to say, in the presence of this audience, that the statement you have read is utterly false, from beginning to end."

On the same day, August 10th, immediately after the adjournment, Mr. Bradley followed Judge FISHER into a street car, and handed him the following note:—

"WASHINGTON, August 6th 1867.

"HON. GEORGE P. FISHER:—

"Sir: In the altercation which occurred between us when you returned to the court-room after the adjournment on the 2d of July last, you observed that you were sick, and were then pleased to add 'You know where to find me; and I hold myself responsible in every form for whatever I say or do,' or words to that effect, after which you applied to me most opprobrious epithets. There is but one interpretation of such an intimation received among gentlemen. I told you I could wait; and am gratified to find that you have recovered, and that the trial of the then pending case being now closed, we are both at liberty.

"That no time may be unnecessarily lost, I beg you will let me know, as soon as you conveniently can, when it will suit you to meet me out of this District, that we may arrange, to our mutual satisfaction, the points of difference between us without incurring the risk and odium which might accompany any controversy here, or in public.

"With the same view I hand you this note in person, and am, sir, your most obedient servant,

"JOS. H. BRADLEY."

So far the matter had been confined to the Criminal Court, in which Judge FISHER was then presiding. The Criminal Court, however, is held in turn by the judges of the Supreme Court of the District of Columbia. The courts of the District of Columbia were organized in their present form by the Act of Congress of March 3d, 1863, which created a Supreme Court of the District of Columbia, and provided for District and Criminal Courts to be held from time to time by one of the justices of the Supreme Court of the district.

The Supreme Court of the District of Columbia, considering the Criminal Court as a mere branch of itself, on October 21st, 1867, entered a rule on Mr. Bradley, reciting the facts of the original quarrel as set forth by Judge FISHER, the order of Judge FISHER in the Criminal Court, the remarks of Mr. Bradley on the announcement of the order of August 10th, and the challenge, and calling upon him "to show cause why he should not be punished for contempt of *this court*, by reason of said offensive conduct and language towards one of its members, and relating to the official acts of the said justice."

Mr. Bradley filed an answer to this rule, setting forth his version of the facts as already given, and objecting that the order of Judge FISHER having been made for an alleged contempt without notice to him, Bradley, was void both at common law and under the statute of March 2d, 1831 (4 Stat. 487), and that therefore when Judge FISHER made his statement and announced the

order, the whole proceeding was extrajudicial, and the mere assertion of an individual, which he, Bradley, was authorized to contradict and deny in any manner he thought fit, and hence he could not be held guilty of a contempt in using the language he did on August 10th. He further argued that it was not technically a contempt. In regard to the letter dated August 6th, he argued that it was not a challenge, nor meant for such, but merely a letter to open the way for an amicable settlement of a private controversy, and that to remove any doubt on this subject he had withdrawn the letter before any action had been taken by the court in regard to this matter.

This answer was sworn to and filed November 4th, 1867, and Mr. Bradley having been heard in support of it, the court, on November 9th, 1867, ordered that "for the causes set forth in said rule," Mr. Bradley's name be stricken from the rolls of the court.

On March 13th, 1868, Mr. Bradley filed a petition in the Supreme Court of the United States for a mandamus to the Judges of the Supreme Court of the District of Columbia, commanding them to restore him to the rolls. The court awarded an alternative mandamus, returnable to December, 1868.

On December 5th, 1868, the Judges of the Supreme Court of the District filed a return to the mandamus. The return sets forth quite argumentatively and in detail, 1st, that Bradley was removed from his office of attorney after due notice and hearing him in his defence, and that the order was a judgment of the court on a subject within its exclusive jurisdiction, and not subject to review by any other court; 2, the contempt committed on August 10th, in open court; 3, that the Criminal Court is merely a session of the Supreme Court of the district, and therefore a contempt of the former was a contempt of the latter; 4, that the conduct of Mr. Bradley was such a misbehavior in his office of attorney, that it gave the court jurisdiction to disbar him independent of the doctrine of contempt.

The mandamus was argued on December 18th, 1868, by Hon. P. Phillips for Bradley. The court relied on its return, and was not represented by counsel.

Mr. Phillips confined his argument to the questions of jurisdiction, maintaining that the Criminal Court and the Supreme Court of the district were separate courts, and the latter had no juris-

diction to disbar for a contempt committed in the former; and that mandamus was the proper remedy.

The Supreme Court of the United States awarded a peremptory mandamus to restore Mr. Bradley, and held—

1. That the Supreme Court of the District of Columbia, as organized by the Act of Congress of 3d March, 1863, is a different court from the Criminal Court as fixed by the same act, though the latter court is held by a judge of the former. Hence, the former court has no power to disbar an attorney for a contempt of the latter.

2. An attorney cannot be disbarred for misbehavior in his office of attorney generally, upon the return of a rule issued against him for contempt of court, and without opportunity of defence to, or explanation of, the first-named charge.

3. Mandamus lies from the Supreme Court of the United States to an inferior Court of the United States, to restore an attorney at law disbarred by the latter court, when it had no jurisdiction in the matter; as *ex. gr.* for a contempt committed in another court.

On the last point MILLER, J., dissented.

The law, as laid down by a decision of the Supreme Court of the United States, made after argument, and almost with unanimity, it would not become us to criticize, were we so inclined, but we may say, with all respect, that this decision rests upon very strict technical constructions, and that the court were almost exceptionally astute in discovering grounds for their jurisdiction.

By the Act of Congress of March 2d, 1831 (4 Stat. 487, Brightly's Dig., tit. *Contempt*), the power of courts of the United States to punish summarily for contempts, shall not extend "to any cases except the misbehavior of any person or persons in the presence of said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of the officers of said courts in their official transactions, and the disobedience or resistance by any officer of said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts."

The second section provides for the punishment by indictment, of certain other acts which were contempts at common law. This act, as is noted by Mr. Phillips in his argument, was introduced by Mr. Buchanan, one of the managers of the impeachment of

Judge PECK, before the Senate of the United States, immediately after the termination of that trial. It unquestionably limits the power of the Supreme Court of the District of Columbia to punish for contempts to those cases included in the act. Were it not for this, the delivery of the letter of August 6th to Judge FISHER by Mr. Bradley, would certainly have been a contempt of the Supreme Court, for while sitting in the car in the street, Judge FISHER was as much a judge of the one court as of the other, and there can be no question that a challenge to a judge at any time, or in any place, is a gross contempt of the court of which he is a member. With the first point of the opinion of the Supreme Court of the United States, therefore, we are not entitled to find fault, though with so grave a consequence of this statute before them, it might have been worth while to inquire very rigidly if the conduct of Mr. Bradley were not within the meaning of the act.

The Supreme Court of the District, therefore, having no jurisdiction of Mr. Bradley's case on the ground of contempt, fell back on their general authority over the behavior of their attorneys (ground 4, return to the mandamus, ante, p. 132), a substantial ground upon which they might have rested securely but for a technical difficulty. The rule on Mr. Bradley had been a rule to show cause "why he should not be punished for *contempt* of this court, by reason of said offensive conduct and language towards one of its members, and relating to the official acts of the said justice." It is not, we believe, denied that the commission of an indictable offence by an attorney is such a misbehavior in his office as will justify any court in disbarring him, nor do we understand the Supreme Court of the United States to intimate any such doctrine; but the action of the court must be based on a notice to the attorney that he is to be punished for *misbehavior*, and where the notice speaks only of *contempt*, though it recite all the facts of his actual conduct which is to be investigated, and though, upon return of the rule, he file an answer covering the whole controversy, and is heard in his defence upon all questions of fact as well as law, yet the judgment of the court shall not stand, because it does not rest on a notice relating *in terms* to *misbehavior*—a decision we think, with all respect, in which technical accuracy is maintained at the expense of substantial justice.

On January 26th, 1869, the Supreme Court of the District

rescinded its order disbarring Mr. Bradley, Chief Justice CARTTER, in behalf of the court, saying that this was done in obedience to the supremacy of authority, and protesting, with considerable warmth, against the reasoning as well as the jurisdiction of the Supreme Court of the United States in the matter. He then announced a further order that no attorney who had, or should thereafter be suspended or disbarred by any of the courts organized under the Act of 1863 (the Criminal Court of the District, &c.), for contempt of court, or professional misconduct, should be allowed to practise in any of the other courts organized under that act.

On the calling of the first case, Mr. Bradley inquired whether the order just made would prevent him from practising in this court, as he desired to be heard in the case just called. The Chief Justice replied that the court would consider whether the order affected Mr. Bradley or not, and would, in the mean time, pass the case called. A few days afterwards Mr. Bradley presented a paper to the court purporting to be an apology, but which the court, through WYLIE, J., in an opinion delivered February 1st, 1869, declined to consider as such. Here, at the present writing, the case rests.

The public attention drawn to this case, and the blundering or mischievous perversions of the decision of the Supreme Court of the United States, by gossiping newspaper correspondents, have induced us to make the foregoing careful statement from official sources. With no acquaintance, prejudice, or favor in regard to either party, we feel constrained to say that the facts, as they stand, are eminently discreditable to both.

That the conduct of Mr. Bradley, on August 10th, both in the court-room and in the car, was a very flagrant contempt of court at common law, is undeniable. Much allowance is to be made for the original difficulty on July 2d, when both judge and counsel were wearied, and their tempers irritated by a session of two months over a judicial farce that seemed interminable. Mr. Bradley's temper is bad enough at most times, it would appear, as it is said by Judge WYLIE that he had already been fined for insulting, in open court, and charging another judge of this same court with falsehood, but no infirmity of temper can be pleaded in palliation of a challenge to a judge for matters growing out of his action while on the bench, and no challenge can be called hasty

which is written on the 6th, not delivered until the 10th, and is for an offence which occurred more than five weeks before. The offence of striking a judge was high treason at common law, and even in the great Act of Edward 3, defining and limiting the number of treasons, it was still classed as the highest crime known to the law to kill a judge in his place. No heavier blow can be struck at the foundations of civil liberty and social order, than the introduction, however remotely, of the element of personal insecurity among the considerations by which a judge shall regulate his judicial action. The delivery of a challenge to any one within the District of Columbia is an indictable offence, under the laws of the United States, and, morally considered, it was raised to a heinous crime by the relations of the parties in this case. This is a matter of the very highest professional concern, and while we would not advocate anything that could in the least degree lessen the proper independence of the bar, yet the perfect independence of the judiciary is a matter of far greater moment. We cannot, therefore, avoid the expression of our regret that so serious a matter should have been allowed to get lost in a maze of side issues and small technicalities.

It is due to Mr. Bradley to say that, in his answer to the rule in the Supreme Court of the District, he endeavors to explain that the letter of August 6th was not a challenge, but we have not been able to see the force of his explanation. That the letter meant a challenge, no one, having the least knowledge of the English language as used for the purposes of hostile encounters, can entertain a moment's doubt. It was a challenge, and was intended to be so understood, and it is puerile and evasive to call it anything else.

While, however, we consider Mr. Bradley to have been most in the wrong, yet the conduct of Judge FISHER is liable to severe censure. Mr. Bradley's account of the first difficulty, on July 2d, puts the judge altogether in fault, and though we may fairly assume that this account is colored by the passion of the quarrel, yet it attributes language and behavior to the judge, in the presence of Mr. Phillips and other gentlemen, which, being uncontradicted, must be assumed as substantially true. A man who, under any provocation of mere words, calls another "a scoundrel and a coward," and dares him to "step out" to a pugilistic encounter, lacks, to speak mildly, the temper which qualifies him

for judicial station. The truth is, and it is quite time it should be plainly spoken, that the court, whether through its fault or its misfortune, has been an actor in several scenes which have impaired public confidence in it as a judicial tribunal. We have called the Surratt trial a judicial farce—it was a farce, but of that melancholy kind at which thoughtful people do not laugh; and the disgust which was felt at the trial of Mary Harris, in the same court, is still fresh in the professional mind.

Trials at the Old Bailey, or The Tombs, and kindred courts, are always the occasions on which judicial and forensic proprieties are most ignored, but it is particularly unfortunate when a court which descends to the Old Bailey style, bears a title so similar to that of the great tribunal whose reputation is of national importance. We hope that Congress will speedily change the name of the Supreme Court of the District of Columbia, so that the Supreme Court of the United States, already menaced with sufficient dangers of its own in the perilous field of legal politics, shall not be loaded with any additional burdens of popular distrust. J. T. M.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

LORIN PALMER *v.* GEORGE S. HARRIS.

A trade-mark having upon it a false statement which did not, and could not produce any effect upon the purchasers of the article, is nevertheless so tainted by the falsehood that equity refuses to protect it.

A trade-mark for a brand of segars, manufactured in New York, had upon it, in Spanish, words, which interpreted into English, mean: "Factory of segars from the best plantations de la Vuelta Abajo, calle del Agua, Habana." Equity refused, on the ground of the falsehood, to enjoin a printer from counterfeiting the device, and supplying the trade with his imitations.

THIS was an appeal from a decree of the Court of Common Pleas of Philadelphia, which refused to grant an injunction to restrain Harris from counterfeiting Palmer's trade-mark.

The facts were that Palmer, a dealer in segars, designed a label for a particular brand which he manufactured, and which had acquired an extensive popularity in the United States as the